

REPRESENTATIVE FOR PETITIONER:
Gary Emberton, Pro Se

REPRESENTATIVE FOR RESPONDENT:
Sheila Blake

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Emberton Enterprises, Inc.)	Petition No.:	07-002-02-1-5-00186a
)		
)	Parcel:	0030168000
)		
Petitioner,)		
)		
v.)		
)	Brown County	
Washington Township Assessor,)	Washington Township	
)	2002 Assessment	
Respondent.)		

Appeal from the Final Determination of the
Brown County Property Tax Assessment Board of Appeals

December 17, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue:

Should the land classification be changed to agricultural woodland rather than excess residential acreage?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. On November 7, 2005, the Brown County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination. On December 10, 2005, Emberton Enterprises, Inc. (“Petitioner”) filed a Form 131 Petition for Review of Assessment, requesting the Board to conduct an administrative review.
2. Kay Schwade, the duly designated Administrative Law Judge (“ALJ”) authorized by the Board, held a hearing in Nashville on August 21, 2007.
3. The following persons were sworn as witnesses at the hearing:
 - For the Petitioner – Gary Emberton,
 - For the Respondent – Sheila Blake.
4. The Petitioner presented a single group of exhibits that collectively apply to a total of seven parcels and appeals. The subject parcel was identified as “Parcel 8000” in exhibit references and in the testimony. The Petitioner presented following exhibits:
 - Petitioner’s Exhibit 1 – 2002 Form 133 Petition for Correction of Error for Parcel 7001,
 - Petitioner’s Exhibit 2 – 2003 Form 133 Petition for Correction of Error for Parcel 7000,
 - Petitioner’s Exhibit 3 – Aerial map of Parcel 7000/7001,
 - Petitioner’s Exhibit 4 – Sales receipts for timber sales from Parcel 7000/7001,
 - Petitioner’s Exhibit 5 – 2002 Form 133 Petition for Correction of Error for Parcel 5000,
 - Petitioner’s Exhibit 6 – 2003 Form 133 Petition for Correction of Error for Parcel 5000,
 - Petitioner’s Exhibit 7 – Aerial map of Parcel 5000,
 - Petitioner’s Exhibit 8 – 2002 Form 133 Petition for Correction of Error for Parcel 2002,
 - Petitioner’s Exhibit 9 – 2003 Form 133 Petition for Correction of Error for Parcel 2002,
 - Petitioner’s Exhibit 10 – Aerial map of Parcel 2002,
 - Petitioner’s Exhibit 11 – Sales receipts for timber sales from Parcel 2002,
 - Petitioner’s Exhibit 12 – Aerial map of Parcel 3008,
 - Petitioner’s Exhibit 13 – Property record card for Parcel 3008,

Petitioner's Exhibit 14 – Sales receipts for timber sales from Parcel 3008,
Petitioner's Exhibit 15 – Property record card for Joan Collins property,
Petitioner's Exhibit 16 – Aerial map for Parcel 8000,
Petitioner's Exhibit 17 – Property record card for Parcel 8000,
Petitioner's Exhibit 18 – Sales receipts for timber sales from Parcel 8000,
Petitioner's Exhibit 19 – Property record card for Parcel 7000,
Petitioner's Exhibit 20 – Property record card for Parcel 3000,
Petitioner's Exhibit 21 – Letter from Paula Waterman,
Petitioner's Exhibit 22 – Aerial map for Parcel 3000,
Petitioner's Exhibit 23 – Sales receipts for timber sales from Parcel 3000,
Petitioner's Exhibit 24 – Pages 99 through 106 from the 2002 Real Property
Assessment Guidelines – Version A.

5. The Respondent also presented a collective group of exhibits for seven parcels and appeals. The Respondent presented following exhibits:

Respondent's Exhibit 1 – Property record card for Parcel 8000,
Respondent's Exhibit 2 – Ind. Code § 6-1.1-4-13,
Respondent's Exhibit 3 – Bryan K. Piles, Findings and Conclusions, page 8 of 10
pages,
Respondent's Exhibit 4 – Diane Ritterskamp, Findings and Conclusions, pages 3
and 4 of 6 pages,
Respondent's Exhibit 5 – 2004 Sales Disclosure Form for property located on
Nelson Ridge Road,
Respondent's Exhibit 6 – Aerial map showing location of the Emberton, Burns,
Bay and Butler properties,
Respondent's Exhibit 7 – 2007 Sales Disclosure for the Butler property,
Respondent's Exhibit 8 – Property record card for the Butler property reflecting
the 3/1/2005 assessed value,
Respondent's Exhibit 9 – Property record card for the Burns property,
Respondent's Exhibit 10 – Property record card for the Butler property reflecting
the 3/1/2006 assessed value,
Respondent's Exhibit 11 – Property record card for the Emberton property
reflecting the 3/1/2005 assessed value.

6. The following additional items are recognized as part of the record:

Board Exhibit A – 131 Petition with Form 115 attached,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet.

7. The subject property is 35.34 acres of unimproved, vacant land located at 1016 Nelson
Ridge Road.

8. The ALJ did not conduct an on-site inspection of the subject property.
9. The PTABOA determined the assessed value is \$86,100.
10. The Petitioner did not request a specific value for the subject property.

CONTENTIONS

11. The Petitioner bought this property in June of 2004 for \$99,900 and sold it in November of 2004 for \$122,000. The Petitioner claims it will have to pay any additional taxes that result from increasing the assessed value for 2002. According to the Petitioner, the subject property is devoted to agricultural use and is entitled to the negative 80% adjustment for woodland. *Emberton testimony.*
12. There is no dispute that the Petitioner is in the timber business. The subject property was purchased for the timber. During the time of ownership, the potential timber harvest is improved by removing the undesirable trees, removing vines, and constructing access roads. *Emberton testimony.*
13. The aerial map for the subject property shows this parcel outlined in yellow. The outlined area demonstrates the subject property is all timber with power lines running across it. The subject property has no recreational use or purpose. *Emberton testimony; Pet'r Ex. 16.*
14. A sales receipt for timber shows that Foley Hardwoods, Inc. purchased timber in August 2004. That timber was harvested from the subject property. *Emberton testimony; Pet'r Ex. 18.*
15. The subject property was classified as agricultural woodland prior to the 2002 reassessment. *Emberton testimony; Pet'r Ex. 17.*

16. According to the Respondent, the adjustment for woodland is for non-productive agricultural land, but the subject property is very productive. The analysis used by the Board in findings for similar properties applies to the Emberton properties—the Board has repeatedly found that it is not enough to “allow nature to take its course” to prove that land is devoted to the production of timber. *Blake testimony; Resp’t Ex. 3, 4.*
17. The Respondent claims that the subject property is not devoted to agricultural use and that Mr. Emberton is a businessman, not a farmer. There is no evidence of replanting or reseeded for future timber harvest. The Petitioner purchases timbered land, removes the timber, and then either sells the land or develops the land for residential use. In this particular case, the subject property was purchased in June 2004 for \$99,900. After the timber was removed, the Petitioner sold the property in November 2004 for \$122,000. *Blake testimony; Resp’t Ex. 5.*

ADMINISTRATIVE REVIEW AND THE PETITIONER’S BURDEN

18. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
19. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
20. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

21. Property is assessed on its "true tax value." Ind. Code § 6-1.1-1-3. Prior to 2002, true tax value was determined under Indiana's assessment regulations. The determination of a property's assessed value was inextricably linked to how the regulations were applied. In 2002, Indiana overhauled its property tax assessment system to incorporate an external, objectively verifiable benchmark by which to determine true tax value. That benchmark is market value-in-use.¹ As a result, the new system shifts the focus from examining the methodology of an assessment to examining whether a property's assessed value actually reflects market value-in-use. *See* 50 IAC 2.3-1-1(d). Therefore, determining the current use of the property is one of the most basic parts of assessment analysis.

22. The Indiana General Assembly directed the Department of Local Government Finance to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13. Agricultural property is "[t]he land and improvements devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock." GUIDELINES, glossary at 1. By statute, "land shall be assessed as agricultural land *only* when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a) (emphasis added). The word "devote" means, "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition).

23. There is no dispute that the Petitioner has been in the timber business for many years. The Petitioner failed to explain how that fact is relevant to someone else's use of the subject property in 2002, which was well before the Petitioner bought the property. It does not prove that the subject property was devoted to agricultural use during the time that is relevant to the 2002 assessment. Similarly, the Petitioner's use from June until November of 2004, when Emberton Enterprises owned the property, is not probative regarding use in 2002.

¹ "True tax value" is "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).

24. The trees that were harvested as marketable timber in 2004 obviously would have been growing on the property in 2002. Nevertheless, that point is not enough to establish that the property was *devoted* to agricultural use in 2002.
25. The evidence shows that this parcel was assessed with an agricultural woodland classification prior to the 2002 reassessment, but that fact is not probative evidence the current land value is wrong because each tax year is separate and distinct. *See Quality Stores, Inc. v. State Bd. of Tax Comm'rs*, 740 N.E.2d 939, 942 (Ind. Tax Ct. 2000); *Barth v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 (Ind. Tax Ct. 1998) (each tax year stands on its own and where taxpayer challenges an assessment the resolution does not depend on how the property was previously assessed).
26. The Guidelines stress that the method for valuing land is of less importance than arriving at the correct value of the land as of the valuation date. GUIDELINES, ch. 2 at 16; *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). The Petitioner's argument focuses on the methodology used for the assessment. The Petitioner failed to show that the assessment was not a reasonable measure of true tax value. *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d) ("failure to comply with the ... Guidelines ... does not in itself show that the assessment is not a reasonable measure of 'True Tax Value[.]'"). *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *Westfield Golf*, 859 N.E.2d at 399.
27. The Petitioner could have tried to show through market-based evidence that the assessed value does not accurately reflect market value-in-use. *Eckerling*, 841 N.E.2d at 678 (stating that a taxpayer who focused only on methodology and did not prove what the market value-in-use should be failed to make a prima facie case). The Petitioner did not do so.
28. When a taxpayer fails to provide probative evidence supporting a claim that an assessment should be changed, the Respondent's duty to support the assessment with

substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

SUMMARY OF FINAL DETERMINATION

29. The Board finds in favor of Respondent. The assessment will not be changed.

This Final Determination of the above captioned matter is issued on the date first written above.

Commissioner, Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>